

# **APPENDIX A**

## *Notice of Preparation*



# Notice of Preparation

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**Subject: Notice of Preparation of a Draft Supplemental Environmental Impact Report (SEIR)**

**Lead Agency:**

City of Carlsbad, Planning Division  
1635 Faraday Avenue  
Carlsbad, CA 92008

**Consulting Firm:**

Dudek  
605 Third Street  
Encinitas, CA 92024

**Contact:** Barbara Kennedy

**Phone:** (760) 602-4626

**Email:** barbara.kennedy@carlsbadca.gov

**Contact:** Shawn Shamlou

**Phone:** (760) 479-4228

**Email:** sshamlou@dudek.com

The City of Carlsbad will be the Lead Agency and will prepare a Draft Supplemental Environmental Impact Report (SEIR) for the project identified below.

**Project Number and Title:** EIR 02-03(A) – Buena Vista Creek Channel Maintenance Project Supplemental EIR

**Project Applicant:** City of Carlsbad Utilities Department

**Project Location:** The proposed project is located along Buena Vista Creek between the South Vista Way bridge and the Jefferson Street bridge located within the cities of Carlsbad and Oceanside, California. The area that is currently covered under the Buena Vista Creek Channel Maintenance Project 2003 Programmatic Environmental Impact Report (PEIR; SCH #2002101015) is approximately 2,750 feet in length, extending from the South Vista Way bridge to the coastal zone boundary east of the Jefferson Street bridge approximately 945 feet. In addition to this area, the proposed project would also incorporate the area along Buena Vista Creek between the Jefferson Street Bridge and the coastal zone boundary.

**Project Description:** The City of Carlsbad (City) would like to continue to conduct maintenance and flood control activities within Buena Vista Creek as authorized under a current California Department of Fish and Game (CDFG) Streambed Alteration Agreement (SAA). The proposed project would also implement flood control activities in areas not previously considered in the 2003 PEIR, including adding the area east of the Jefferson Street Bridge, which is within the coastal zone.

The City's current channel maintenance program extends from 2003 for a 10-year period, through 2013. The flood control maintenance would protect the existing Maintenance District properties from a 100-year storm event, and reduce adverse water quality effects to Buena Vista Creek from storm water runoff from surrounding parking lots.

The City is proposing to continue to remove vegetation in the same manner as currently being performed under the Streambed Alteration Agreement. This method is by hand within the northern half of the channel, which is dominated primarily by freshwater marsh. This method minimizes impacts to the southern willow scrub growing along the southern half of the channel. The vegetation would be removed in the northern half of the channel over a period of five years: one fifth of the northern half of the channel would be removed by hand down to ground level every year. Thus, each year one-tenth of the vegetation in the channel project site would be removed. Maintenance vehicles will use the existing access road that runs parallel to the northern bank of the channel. All maintenance activities would occur outside of the

nesting bird season, which extends from March 15 through September 15, and are scheduled to commence in 2014.

**Potential Environmental Effects:** The currently proposed project may involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects from the previous CEQA analysis in the 2003 PEIR. The SEIR will focus on potentially significant impacts not disclosed in the 2003 PEIR including three topics that have since been updated in the City's initial study checklist as a result of 2010 amendments to the CEQA Guidelines: agricultural and forestry resources, greenhouse gas emissions, and traffic. Mitigation measures will be recommended in the SEIR to minimize any potentially significant impacts that would result from project related actions.

In addition, pursuant to Section 15060(d) of the CEQA Guidelines, it appears that the proposed project could potentially result in significant environmental impacts in the following areas: Biological Resources, Cultural Resources, Paleontological Resources, Hydrology/Water Quality, and Cumulative Effects.

Additional materials describing the project description, location, and the potential environmental effects are available on the City's website at:

<http://www.carlsbadca.gov/services/departments/planning/Pages/agendas-minutes-and-notice.aspx>.

We need to know your ideas about the effect this project might have on the environment and your suggestions for ways the project could be revised to reduce or avoid any significant environmental damage. Your ideas will help us decide what issues to analyze in the environmental review of this project. An initial study was **not** prepared for the project.

Due to the time limits mandated by State Law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice. Your comments may be submitted in writing to the City of Carlsbad (Attn: Barbara Kennedy, Associate Planner) at the address shown above **no later than April 16, 2012**. Please include in your response the name, email address, phone number and mailing address of the contact person.

*Don Neu*

DON NEU  
City Planner

*March 14, 2012*

Date



EDMUND G. BROWN JR.  
GOVERNOR

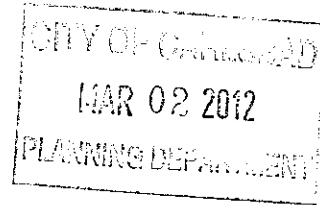
STATE OF CALIFORNIA  
GOVERNOR'S OFFICE of PLANNING AND RESEARCH



KEN ALEX  
DIRECTOR

Notice of Preparation

February 28, 2012



To: Reviewing Agencies

Re: EIR 02-03(A) - Buena Vista Creek Channel Maintenance Project Supplemental EIR  
SCH# 2002101015

Attached for your review and comment is the Notice of Preparation (NOP) for the EIR 02-03(A) - Buena Vista Creek Channel Maintenance Project Supplemental EIR draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

Barbara Kennedy  
City of Carlsbad, Planning Division  
1635 Faraday Avenue  
Carlsbad, CA 92008

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Attachments  
cc: Lead Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2002101015  
**Project Title** EIR 02-03(A) - Buena Vista Creek Channel Maintenance Project Supplemental EIR  
**Lead Agency** Carlsbad, City of

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**Type** NOP Notice of Preparation  
**Description** The City of Carlsbad would like to continue to conduct maintenance and flood control activities within Buena Vista Creek as authorized under a current California Department of Fish and Game Streambed Alteration Agreement.  
  
The City's current channel maintenance program extends from 2003 for a 10 year period, through 2013. The flood control maintenance would protect the existing Maintenance District properties from a 100-year storm event, and reduce adverse water quality effects to Buena Vista Creek from storm water runoff from surrounding parking lots. Maintenance is proposed to continue over a 6-year period.

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**Lead Agency Contact**

**Name** Barbara Kennedy  
**Agency** City of Carlsbad, Planning Division  
**Phone** 760 602-4626 **Fax**  
**email**  
**Address** 1635 Faraday Avenue  
**City** Carlsbad **State** CA **Zip** 92008

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**Project Location**

**County** San Diego  
**City** Carlsbad  
**Region**  
**Cross Streets** South Vista Way and Jefferson Street  
**Lat / Long**  
**Parcel No.** Multiple  
**Township** 11S **Range** 4W **Section** 31,32 **Base** USGS

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**Proximity to:**

**Highways** SR-78  
**Airports** Multiple  
**Railways** BNSF Railroad  
**Waterways** Buena Vista Creek, Buena Vista Lagoon  
**Schools** Various  
**Land Use** Open Space

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**Project Issues**

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**Reviewing  
Agencies**

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**Date Received** 02/28/2012 **Start of Review** 02/28/2012 **End of Review** 03/28/2012

Resources Agency
☒ Resources Agency  
Nadell Gayou

☐ Dept. of Boating & Waterways

Nicole Wong

☒ California Coastal Commission

Elizabeth A. Fuchs

☐ Colorado River Board  
Gerald R. Zimmerman

☐ Dept. of Conservation  
Elizabeth Carpenter

☐ California Energy Commission  
Eric Knight

☐ Cal Fire  
Allen Robertson

☐ Central Valley Flood Protection Board  
James Herota

☒ Office of Historic Preservation  
Ron Parsons

☒ Dept of Parks & Recreation  
Environmental Stewardship Section

☐ California Department of Resources, Recycling & Recovery  
Sue O'Leary

☐ S.F. Bay Conservation & Dev't. Comm.  
Steve McAdam

☒ Dept. of Water Resources Resources Agency  
Nadell Gayou
Fish and Game
☐ Depart. of Fish & Game  
Scott Flint  
Environmental Services Division

☐ Fish & Game Region 1  
Donald Koch

☐ Fish & Game Region 1E  
Laurie Harnsberger

☐ Fish & Game Region 2  
Jeff Drongesen

☐ Fish & Game Region 3  
Charles Armor

☐ Fish & Game Region 4  
Julie Vance

☒ Fish & Game Region 5  
Leslie Newton-Reed  
Habitat Conservation Program

☐ Fish & Game Region 6  
Gabrina Gatchel  
Habitat Conservation Program

☐ Fish & Game Region 6 I/M  
Brad Henderson  
Inyo/Mono, Habitat Conservation Program

☐ Dept. of Fish & Game M  
George Isaac  
Marine Region
Other Departments
☐ Food & Agriculture  
Sandra Schubert  
Dept. of Food and Agriculture

☐ Depart. of General Services  
Public School Construction

☐ Dept. of General Services  
Anna Garbeff  
Environmental Services Section

☐ Dept. of Public Health  
Bridgette Binning  
Dept. of Health/Drinking Water

☐ Delta Stewardship Council  
Kevan Samsam
Independent Commissions, Boards
☐ Delta Protection Commission  
Linda Flack

☐ Cal EMA (Emergency Management Agency)  
Dennis Castrillo

☒ Native American Heritage Comm.  
Debbie Treadway

☐ Public Utilities Commission  
Leo Wong

☐ Santa Monica Bay Restoration  
Guangyu Wang

☐ State Lands Commission  
Jennifer Deleong

☐ Tahoe Regional Planning Agency (TRPA)  
Cherry Jacques
Business, Trans & Housing
☐ Caltrans - Division of Aeronautics  
Philip Crimmins

☐ Caltrans - Planning  
Terri Pencovic

☒ California Highway Patrol  
Suzann Ikeuchi  
Office of Special Projects

☐ Housing & Community Development  
CEQA Coordinator  
Housing Policy Division
Dept. of Transportation
☐ Caltrans, District 1  
Rex Jackman

☐ Caltrans, District 2  
Marcelino Gonzalez

☐ Caltrans, District 3  
Bruce de Terra

☐ Caltrans, District 4  
Lisa Carboni

☐ Caltrans, District 5  
David Murray

☐ Caltrans, District 6  
Michael Navarro

☐ Caltrans, District 7  
Dianna Watson

☐ Caltrans, District 8  
Dan Kopulsky

☐ Caltrans, District 9  
Gayle Rosander

☐ Caltrans, District 10  
Tom Dumas

☒ Caltrans, District 11  
Jacob Armstrong

☐ Caltrans, District 12  
Marlon Regisford
Cal EPAAir Resources Board
☐ Airport/Energy Projects  
Jim Lerner

☐ Transportation Projects  
Douglas Ito

☐ Industrial Projects  
Mike Tollstrup

☐ State Water Resources Control Board  
Regional Programs Unit  
Division of Financial Assistance

☐ State Water Resources Control Board  
Student Intern, 401 Water Quality Certification Unit  
Division of Water Quality

☐ State Water Resources Control Board  
Phil Crader  
Division of Water Rights

☒ Dept. of Toxic Substances Control  
CEQA Tracking Center

☐ Department of Pesticide Regulation  
CEQA Coordinator
Regional Water Quality Control Board (RWQCB)
☐ RWQCB 1  
Cathleen Hudson  
North Coast Region (1)

☐ RWQCB 2  
Environmental Document Coordinator  
San Francisco Bay Region (2)

☐ RWQCB 3  
Central Coast Region (3)

☐ RWQCB 4  
Teresa Rodgers  
Los Angeles Region (4)

☐ RWQCB 5S  
Central Valley Region (5)

☐ RWQCB 5F  
Central Valley Region (5)  
Fresno Branch Office

☐ RWQCB 5R  
Central Valley Region (5)  
Redding Branch Office

☐ RWQCB 6  
Lahontan Region (6)

☐ RWQCB 6V  
Lahontan Region (6)  
Victorville Branch Office

☐ RWQCB 7  
Colorado River Basin Region (7)

☐ RWQCB 8  
Santa Ana Region (8)

☒ RWQCB 9  
San Diego Region (9)

☐ Other \_\_\_\_\_

☐ \_\_\_\_\_  
Conservancy

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***Buena Vista Audubon Society***  
**PO Box 480**  
**Oceanside, CA 92049-0480**

**March 28, 2012**

Ms. Barbara Kennedy, Associate Planner  
City of Carlsbad Planning Department  
1635 Faraday Avenue  
Carlsbad, CA 92008

**SENT BY EMAIL**

**Subject: Scoping Comments on Buena Vista Creek Maintenance Supplemental EIR**

Dear Ms. Kennedy:

I am writing this comment letter on behalf of the Buena Vista Audubon Society, a non-profit environmental organization with a membership of 1,800 households in the North County Coastal area. Our primary focus is the preservation and enhancement of the Buena Vista Lagoon, and of land uses in the watershed that impact the health of the lagoon ecosystem. The original 2003 EIR examined the Buena Vista Creek maintenance project over a 10-year period through 2013 and involved the creek segment from the South Vista Way bridge to the coastal zone boundary east of the Jefferson Street bridge. This supplemental EIR will analyze environmental impacts for a further 6-year period for the entire creek length between the South Vista Way and Jefferson Street bridges. As this project has potential environmental impacts on the creek and the lagoon which is immediately downstream of the project, we are submitting the following questions that should be examined as part of the EIR, in order to minimize environmental impacts.

#### Hydrology

Since the first EIR was prepared, there have been many land use changes in the watershed from development and there will be more during the next six years, including closing of the quarry and development of that site. These would be expected to alter the creek hydrology, including storm flows and bank scouring. Therefore, to minimize impacts to stream vegetation, it appears that new hydrology studies are required. Otherwise, how will the City know the minimum amount of vegetation that needs to be removed to avoid flow obstructions and flooding? How can you assure a minimum of habitat disturbance and still meet the goal of the project? Also, how does this project relate to the Master Drainage Plan for the watershed?

#### Vegetation

The project involves the clearing of vegetation on the northern half of the creek width. What criteria will be used to define the northern edge of the cleared area? Is this the 100-year flood line, the edge of the creek bed, or other measure? The planned project, Inns at Buena Vista Creek, proposes riparian habitat restoration on the northern side of the creek along the same segment. How will the vegetation removal project align with those restoration activities along the creek, and how will access for clearance be accomplished without damage to restoration areas? Describe the rationale behind the frequency of vegetation removal and possible alternatives that are less impactful of the riparian habitat.

#### Endangered Species

It is probable that willow trees will be found growing spontaneously in the clearance area, or will grow there as a result of growth out from the Inns on Buena Vista Creek riparian habitat revegetation program. As the Least Bell's Vireo has been identified in the area, and as this species is dependent upon willow riparian habitat, how will clearance activities deal with this eventuality?

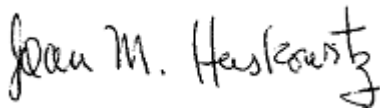
Under these circumstances, it appears that willow removal could have a significant impact on the enhancement and expansion of Vireo habitat in this segment of the creek? The EIR should analyze this impact and determine how it can be avoided or mitigated.

#### Water Quality

Buena Vista Creek is considered an impaired waterway. Describe how the removal of the cattail stands and other wetland plants will impact water quality in the creek and downstream in the lagoon. Creek vegetation acts as a filter to debris flowing down the creek and this material may end up in the lagoon after vegetation clearance.

Thank you for the opportunity to comment on the scope of environmental issues to be analyzed in this project EIR. If you have questions, I can be contacted at (760) 942-5167 or at [jmherskowitz@yahoo.com](mailto:jmherskowitz@yahoo.com).

Sincerely,

A handwritten signature in black ink that reads "Joan M. Herskowitz". The signature is written in a cursive, slightly slanted style.

Joan M. Herskowitz  
Co-Chair, Conservation Committee  
Buena Vista Audubon Society



U. S. Fish and Wildlife Service  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road, Suite 101  
Carlsbad, California 92011  
760-431-9440  
FAX 760-431-9618



California Department of Fish and Game  
South Coast Region  
3883 Ruffin Road  
San Diego, California 92123  
858-467-4201  
FAX 858-467-4239

In Reply Refer To:  
FWS/CDFG-11B0316-12TA0241

APR 06 2012

Ms. Barbara Kennedy, Associate Planner  
City of Carlsbad Planning Division  
1635 Faraday Avenue  
Carlsbad, California 92008

**Subject:** Comments on the Notice of Preparation of a Supplemental Environmental Impact Report for the Buena Vista Creek Channel Maintenance Project, City of Carlsbad (SCH# 2002101015)

Dear Ms. Kennedy:

The California Department of Fish and Game (Department) and U.S. Fish and Wildlife Service (Service), collectively referred to as the Wildlife Agencies, have reviewed the above-referenced Notice of Preparation (NOP) of a Supplemental Environmental Impact Report (SEIR) for the Buena Vista Creek Channel Maintenance Project, in the City of Carlsbad (City), dated February 28, 2012. The project details provided herein are based on the information provided in the NOP.

The City of Carlsbad (City) has an approved Multiple Habitat Conservation Program (MHCP) Habitat Management Plan (HMP) and Implementing Agreement under the Department's Natural Community Conservation Planning program and the Service's Habitat Conservation Plan program pursuant to the Federal Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). In addition, the City of Oceanside has a draft MHCP Subarea Plan (SAP) which is being finalized with the Wildlife Agencies. Issue areas in the draft SEIR that may be influenced by the HMP and Implementing Agreement, and draft SAP, include "Land Use," "Landform Alteration/Visual Quality," "Traffic/Circulation," "Biological Resources," "Drainage/Urban Runoff/Water Quality," "Noise," and "Cumulative Effects." The draft SEIR should demonstrate that the proposed project is consistent with the HMP and Implementing Agreement, and draft MHCP Subarea Plan.

The City previously issued the Buena Vista Creek Channel Maintenance Project 2003 Programmatic Environmental Impact Report (PEIR) for the project, which will expire in 2013. The NOP proposes to continue channel maintenance an additional 6 years until 2019. The Department also issued a Streambed Alteration Agreement (SAA) for the project.

The proposed project is located along Buena Vista Creek between the South Vista Way Bridge and the Jefferson Street Bridge within the cities of Carlsbad and Oceanside. The portion of the project that is currently covered under the 2003 PEIR is approximately 2,750 feet in length, extending from the South Vista Way Bridge to the coastal zone boundary approximately 945 feet east of the Jefferson Street Bridge. In addition, the proposed project would implement flood control activities within the 945 feet of channel between the coastal zone boundary and the Jefferson Street Bridge, as well as an undefined length of channel west of Jefferson Street Bridge.

The proposed project would continue to remove vegetation in the same manner as currently being performed under the existing SAA. This method is by hand within the northern half of the channel, which is dominated primarily by freshwater marsh. The vegetation would be removed in the northern half of the channel over a period of five years: one fifth of the northern half of the channel would be removed by hand down to ground level every year. Maintenance vehicles would use the existing access road that runs parallel to the northern bank of the channel. All maintenance activities would occur outside the nesting bird season (March 15 through September 15) and are scheduled to commence in 2014.

Since the 2003 PEIR was certified, a pair of least Bell's vireo (*Vireo bellii pusillus*, "vireo"), a federally and state-listed endangered species, was observed in the project area during surveys for a separate and unrelated project. However, impacts to southern willow scrub, their preferred habitat, would be minimized.

The draft SEIR will focus on potentially significant impacts not addressed in the 2003 PEIR. Mitigation measures will be recommended in the draft SEIR to minimize any potentially significant impacts that would result from project-related actions.

The Wildlife Agencies have several concerns regarding the potential effects of this project on sensitive biological resources, and its compliance with the City's HMP and Oceanside's draft SAP. Our comments and recommendations address our concerns and are intended to assist the City in its analysis of consistency with the HMP and draft SAP, and of the project-related biological direct and indirect impacts for the draft SEIR.

### Specific Comments

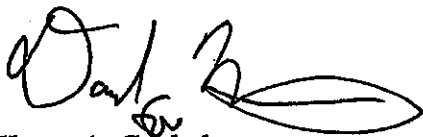
1. The draft SEIR should include a map showing the location of the vireo pair observed within the project site.
2. In addition to the vireo observed within the project site, two pairs of federal and state listed endangered light-footed clapper rails (*Rallus longirostris levipes*, "clapper rail") were observed in the eastern portion of Buena Vista Lagoon during the 2011 clapper rail census (Zemba et al. 2012). The draft SEIR should require that focused surveys for both the vireo and the clapper rails be conducted prior to commencing channel maintenance each year. If surveys indicate that the proposed activities "may affect" any state or federally listed species in the Oceanside portion of the project, consultation with the Wildlife Agencies must occur prior to commencement of work.
3. The NOP states that one fifth of the northern half of the channel would be removed every year. Therefore, the draft SEIR should specify acreage amounts using text and graphics for each type of vegetation to be removed.
4. Since the current Stream Alteration Agreement (SAA#1600-2004-0004-0006-R5) expires December 31, 2013, the Department recommends that the applicant formally submit a completed streambed notification package to the Department. During this time, the Department

will determine if a Streambed Alteration Agreement will be required and recommend appropriate mitigation ratios.

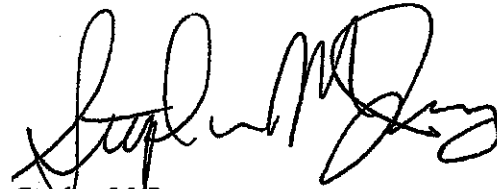
5. Breeding season for most avian species occurs February 15 through August 31; however, the breeding season occurs as early as January for some raptor species. Therefore, we recommend that the breeding season for raptors in the draft SEIR should be January 1 through September 15.
6. The Wildlife Agencies would also emphasize that one of the purposes of CEQA is to "prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives when the governmental agency finds the changes to be feasible" (CEQA Guideline, Section 15002 (a)(3)). Therefore, the CEQA alternatives analysis for this project is extremely important. The Department is particularly interested in the DEIR describing a "range of reasonable alternatives to the project (particularly options that minimizing development encroachment into biological resource areas). Additionally, in order for the Department to utilize the CEQA document as a Responsible Agency, the alternatives must include those which avoid or otherwise minimize impacts to sensitive biological resources that are regulated by the Wildlife Agencies. Therefore, it is recommended that the draft PEIR discuss a viable list of alternatives in the Alternative Analyses Report.

We appreciate the opportunity to provide comments on the subject NOP. Should you have any questions regarding this letter, please Janet Stuckrath (Service) at (760) 431-9440 extension 270 or Bryand Duke (Department) at (858) 637-5511.

Sincerely,



**Karen A. Goebel**  
Assistant Field Supervisor  
U.S. Fish and Wildlife Service



**Stephen M. Juarez**  
Environmental Program Manager  
California Department of Fish and Game

cc:

State Clearinghouse (by email only; [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))

Literature Cited

Zemba, Richard, Susan M. Hoffman, John Konecny, Laurie Conrad, Charles Gailband, and Michael Mace. 2012. Light-footed clapper rail management, study, and propagation in California: 2011 season. Clapper Rail Recovery Fund, Huntington Beach Wetlands Conservancy, Laguna Hills, California. 29 pp.

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Matthew Rodriguez  
Secretary for  
Environmental Protection



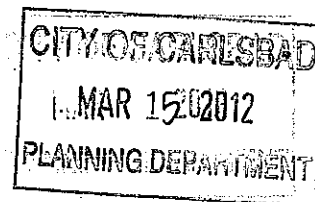
## Department of Toxic Substances Control

Deborah O. Raphael, Director  
5796 Corporate Avenue  
Cypress, California 90630



Edmund G. Brown Jr.  
Governor

March 14, 2012



Ms. Barbara Kennedy  
City of Carlsbad, Planning Division  
1635 Faraday Avenue  
Carlsbad, California 92008

### NOTICE PREPARATION (NOP) OF A SUPPLEMENTAL ENVIRONMENTAL REPORT FOR THE BUENA VISTA CREEK CHANNEL PROJECT, (SCH#200101015), SAN DIEGO COUNTY

Dear Ms. Kennedy:

The Department of Toxic Substances Control (DTSC) has received your submitted Notice of Preparation for a Supplemental Environmental Impact Report (SEIR) for the above-mentioned project. The following project description is stated in your document: "The City of Carlsbad (City) would like to continue to conduct maintenance and flood control activities within Buena Vista Creek as authorized under a current California Department of Fish and Game (CDFG) Streambed Alteration Agreement (SAA). The proposed project would also implement flood control activities in areas not previously considered in the 2003 Program EIR, including adding the area east of the Jefferson Street Bridge, which is within the coastal zone. The proposed project is located along Buena Vista Creek between the South Vista Way bridge and the Jefferson Street Bridge located within the cities of Carlsbad and Oceanside, California".

Based on the review of the submitted document DTSC has the following comments:

- 1) The SEIR should evaluate whether conditions within the Project area may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:
  - National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).
  - EnviroStor (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).

- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
  - Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
  - Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
  - GeoTracker: A List that is maintained by Regional Water Quality Control Boards.
  - Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
  - The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).
- 2) The SEIR should identify the mechanism to initiate any required investigation and/or remediation for any site within the proposed Project area that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents.
- 3) Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the SEIR.
- 4) If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken



during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

- 5) Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.
- 6) Human health and the environment of sensitive receptors should be protected during any construction or demolition activities. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.
- 7) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.
- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.
- 9) DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see [www.dtsc.ca.gov/SiteCleanup/Brownfields](http://www.dtsc.ca.gov/SiteCleanup/Brownfields), or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

Ms. Barbara Kennedy  
March 14, 2012  
Page 4

If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at [rahmed@dtsc.ca.gov](mailto:rahmed@dtsc.ca.gov), or by phone at (714) 484-5491.

Sincerely,



Greg Holmes  
Unit Chief  
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov).

CEQA Tracking Center  
Department of Toxic Substances Control  
Office of Environmental Planning and Analysis  
P.O. Box 806  
Sacramento, California 95812  
Attn: Nancy Ritter  
[nritter@dtsc.ca.gov](mailto:nritter@dtsc.ca.gov)

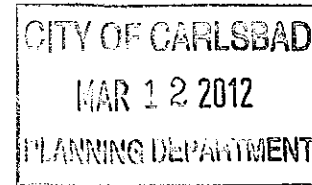
CEQA # 3483

**NATIVE AMERICAN HERITAGE COMMISSION**

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
[ds\\_nahc@pacbell.net](mailto:ds_nahc@pacbell.net)



March 7, 2012



Ms. Barbara Kennedy, Planner

**City of Carlsbad, Planning Division**

1615 Faraday Avenue  
Carlsbad, CA 92008

Re: SCH#2002101015 CEQA Notice of Preparation (NOP); draft Supplemental Environmental Impact Report (DEIR) for the "EIR 02-03(A) – Buena Vista Creek Channel Maintenance Project Supplemental EIR;" located along Buena Vista Creek at the north end of the City of Carlsbad; San Diego County, California

Dear Ms. Kennedy:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3<sup>rd</sup> 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project.

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect.

The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were identified** within the project area identified. This location is known to the NAHC to be very culturally sensitive. Also, the absence of archaeological resources does not preclude their existence. California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC "Sacred Sites," as defined

by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties pursuant to CA Public Resources Code §5097.95. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, if the project is under federal jurisdiction, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally

discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

## Native American Contacts

San Diego County

March 7, 2012

Pala Band of Mission Indians  
Tribal Historic Preservation Office/Shasta Gaugher  
35008 PalaTemecula Road, PMB Luiseno  
50 , Cupeno  
Pala, CA 92059  
(760) 891-3515  
sgaugher@palatribe.com  
(760) 742-3189 Fax

Pauma & Yuima Reservation  
Randall Majel, Chairperson  
P.O. Box 369 Luiseno  
Pauma Valley CA 92061  
paumareservation@aol.com  
(760) 742-1289  
(760) 742-3422 Fax

Pechanga Band of Mission Indians  
Paul Macarro, Cultural Resources Manager  
P.O. Box 1477 Luiseno  
Temecula , CA 92593  
**(951) 770-8100**  
pmacarro@pechanga-nsn.  
gov  
(951) 506-9491 Fax

Rincon Band of Mission Indians  
Tiffany Wolfe, Cultural & Environmental  
P.O. Box 68 Luiseno  
Valley Center, CA 92082  
twolfe@rincontri.org  
(760) 297-2632  
(760) 297-2639 Fax

Pauma Valley Band of Luiseño Indians  
Bennae Calac, Tribal Council Member  
P.O. Box 369 Luiseno  
Pauma Valley CA 92061  
**bennaecalac@aol.com**  
(760) 617-2872  
(760) 742-3422 - FAX

San Pasqual Band of Indians  
Kristie Orosco, Environmental Coordinator  
P.O. Box 365 Luiseno  
Valley Center, CA 92082 Diegueno  
**(760) 749-3200**  
council@sanpasqualtribe.org  
(760) 749-3876 Fax

San Luis Rey Band of Mission Indians  
Tribal Council  
1889 Sunset Drive Luiseno  
Vista , CA 92081  
760-724-8505  
760-724-2172 - fax

San Luis Rey Band of Mission Indians  
Cultural Department  
1889 Sunset Drive Luiseno  
Vista , CA 92081 Cupeno  
760-724-8505  
760-724-2172 - fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2002101015; CEQA Notice of Preparation (NOP); draft Supplemental Environmental Impact Report (DSEIR) for the EIR 02-03(A) - Buena Vista Creek Maintenance Project Supplemental EIR; located in the City of Carlsbad; San Diego County, California.

**Native American Contacts**  
San Diego County  
March 7, 2012

La Jolla Band of Mission Indians  
James Trujillo, Vice Chair  
22000 Highway 76 Luiseno  
Pauma Valley CA 92061  
rob.roy@lajolla-nsn.gov  
(760) 742-3796  
(760) 742-1704 Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2002101015; CEQA Notice of Preparation (NOP); draft Supplemental Environmental Impact Report (DSEIR) for the EIR 02-03(A) - Buena Vista Creek Maintenance Project Supplemental EIR; located in the City of Carlsbad; San Diego County, California.

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## **Preserve Calavera**

Coastal North San Diego County

**March 26, 2012**

**Barbara Kennedy  
Associate Planner  
City of Carlsbad, Planning Department  
1635 Faraday Avenue  
Carlsbad, CA 92008**

**Subject : Scoping Comments Buena Vista Creek Channel Maintenance**

**Dear Ms. Kennedy :**

**These comments on the Supplemental EIR project scope are made on behalf of Preserve Calavera. Preserve Calavera is a grassroots organization whose goal is to preserve, protect and enhance the natural resources of coastal north county. We have a long history of involvement with the Buena Vista Creek Valley and the successful acquisition of what is now the Buena Vista Creek Ecological Reserve just upstream from this proposed project. We appreciate the need to provide adequate downstream flood protection, while minimizing adverse impacts on this critical reach of the watershed.**

**The following are our specific comments on this project:**

### **Land Use and Planning**

- The landowner of the north side of the channel has told us that there was an old agreement with the Coastal Commission that allowed fill from dredging on the west side of Jefferson to be deposited on this site. In the last few years we have observed several times when it looked like dumping occurred on the project site. The EIR should identify this history of dumping and assess what impacts, if any, this might have on site vegetation, creek bank stability and success of revegetation efforts.**
- The EIR for the adopted Master Drainage Plan included numerous conditions which would be relevant for this project. Please identify if this project will include all of those standard conditions, or if not explain why.**
- The landowner of the north side of the channel has a project pending before the City of Oceanside, the Inns at Buena Vista Creek. As part of that they have stated they will be completing a major restoration of the riparian corridor along the creek. Please identify how the project will be impacted if this corridor is restored. In addition to providing for access to do the channel work there may also be issues about impacts to newly restored riparian habitat that does not currently exist on the site.**

**5020 Nighthawk Way –Oceanside, CA 92056**  
**[www.preservecalavera.org](http://www.preservecalavera.org)**

## **Biological Resources**

- Please clarify the rationale for the 5 year clearing cycle (1/5<sup>th</sup> every year) as compared to other potential regimes such as a 10 year cycle. Is the 5 year cycle the minimum necessary to achieve the target flow rates?
- Please clarify what methods will be used to determine presence of any listed species and what action would be taken if they are found on or near the site.
- Least Bell's vireo are present on the south side of the channel- very near the area that will be cleared. With successful revegetation along the north side this hopefully would also become occupied habitat. Please clarify how the project will incorporate the desirable outcome of increasing functional habitat for vireos.
- Please specify exactly where access to the work site will be provided( which may need to change slightly as different sections of the bank are worked on each year) Please discuss how this access has been planned to minimize impacts.
- It was reported at the scoping meeting that during the initial 10 years of this vegetation removal that revegetation has been on-going with native plants. Please identify specific areas that have been revegetated, discuss current habitat condition and explain how such areas are being treated in terms of assessing impacts and determining mitigation requirements. Under typical conditions once an area becomes an established native habitat any future impacts would require mitigation. In the case of wetland habitats this is at a 3:1 ratio. Please explain how the project is addressing this.
- Please include description of work procedures, such as biologist presence, marking limit of work with moveable poles, placement of dumpster, etc. and explain what mechanism is in place to assure these will be followed for the life of the project.

## **Green House Gas Emissions**

- Please include full discussion of the methodology used to assess GHG and the rationale used for the selection of the methodology.

## **Hydrology and Water Quality**

- The hydrologic analysis needs to identify the sub watershed and its condition, cumulative impacts on the watershed, and provide clear justification for the selection of this method of increasing flood capacity.
- This reach of Buena Vista Creek is an impaired water body. It is expected that the Regional Water Quality Control Board will require an action plan to address TMDL's on this subwatershed in the near term. Please include an assessment of how this project would affect the ability to implement broader water quality improvement measures to address the impairments of this sub watershed. We understand this project will need to address its own BMP's but we want an assessment that nothing is being done here will make it harder to address the cumulative conditions of the watershed. Better yet would be to include things that

would contribute toward such future improvements. Perhaps there is a way to set up a banking system to get credits for doing more than is required in one place that could be used by areas where site constraints offer fewer options to fix existing conditions.

- The EIR should assess how this project relates to the adopted Master Drainage Plan- is it fully consistent? What assumptions are made about installation of other components of the system that are not yet in place? How does this interface with what the City of Vista is doing upstream? How will it be impacted by the major changes that occurred to the creek channel as part of the reclamation at Quarry Creek?

- Currently the project area is relatively secure as access is through a locked gate on the sewer station site. The proposed development on the north side would open up access to this area. Such impacts would need to be assessed in the CEQA review for the Inns at Buena Vista Creek development. However there may be indirect impacts on the project site that should be considered here.

- Trail plans have not been approved by DFG on the adjoining BVCER. If trail connections between the project site and the adjacent reserve are not defined then providing trails on the project site could just lead to damage on the BVCER site. A coordinated trails plan needs to be identified and impacts assessed and mitigated as part of any plan for trails on the project site.

#### **Public Services**

- There are currently three sewer lines through the Buena Vista Valley and two maintenance access roads. Please clarify plans for location/relocation/repair of any of these lines and access roads. Are there any options for using these existing degraded areas for access/staging for this project? Are there options for consolidating these public facilities in order to minimize long term, intermittent impacts of repair and maintenance of so many facilities in this sensitive area?

#### **Alternatives Analysis**

- This method of addressing flood capacity has annual impacts in the riparian corridor along a creek for an estimated 60 days a year. That seems a pretty significant impact- that has no end. Alternatives should consider other methods that do not require this kind of continuing impact. The land upstream is now permanently preserved. Perhaps there are some alternatives to expand capacity upstream in a way that would ultimately result in a healthier riparian corridor down stream such that this kind of vegetation removal is not needed. Half of the valley upstream is currently being reclaimed and will have healthy native vegetation along the creek. If all of the invasive vegetation is removed upstream why will this area require continued clearing? The objective needs to be to establish a healthy sustainable creek channel. Healthy creeks do not require annual vegetation clearing.

We appreciate the opportunity to comment on the scope for this project EIR

Sincerely,  
Diane Nygaard  
On Behalf of Preserve Calavera

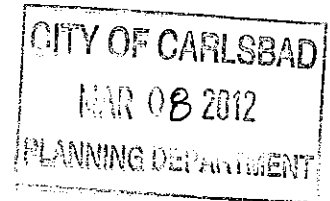
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# San Diego County Archaeological Society, Inc.

Environmental Review Committee

7 March 2012



To: Ms. Barbara Kennedy  
Planning Division  
City of Carlsbad  
1635 Faraday Avenue  
Carlsbad, California 92008

Subject: Notice of Preparation of a Draft Supplemental Environmental Impact Report  
Buena Vista Creek Channel Maintenance Project  
EIR 02-03(A)

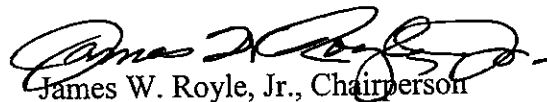
Dear Ms. Kennedy:

Thank you for the Notice of Preparation for the subject project, which was received by this Society last month.

We are pleased that cultural resources have been included in the list of subject areas to be addressed in the DEIR. In order to permit us to review the cultural resources aspects of the project, please include us in the distribution of the DEIR when it becomes available for public review. Also, in order to facilitate our review, we would appreciate being provided with one copy of the cultural resources technical report(s) along with the DEIR.

SDCAS appreciates being included in the environmental review process for this project.

Sincerely,

  
James W. Royle, Jr., Chairperson  
Environmental Review Committee

cc: SDCAS President  
File

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